APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,879	08/20/2003	Peter Mark Grehlinger	TA-612-US	5213

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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 April 2008*.

2a)☒ This action is FINAL.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
    closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2 and 4-29* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 2, 4-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

       1.☐ Certified copies of the priority documents have been received.

       2.☐ Certified copies of the priority documents have been received in Application No. _____.

       3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
          application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This Office Action is responsive to the Amendment filed on 04/28/2008.

2.   Claims 1-2 and 4-29 are pending.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims 1-2 and 4-29 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Dove et al (hereinafter "Dove", US 2003/0035004), Petruk et al (hereinafter

"Petruk", US 2002/0196283) and Franck ("Integration of the Rheometer into Today's

Formulation Laboratories", June 2002)

Regarding claims 1, 13, 18, 23, 26, 28-29, Dove teaches a method for

dynamically controlling operation of a device, comprising: creating a program on a

programming interface for executing a test upon a sample in a device by receiving user

selections of a plurality of nodes and connections of each node to another node

according to directional connection indicators, wherein nodes indicate steps for

performing a test upon a sample or configuring a device for performing a test upon a

sample [0018]; creating scripts for generating a sequence of instructions to the device,

wherein the scripts include instructions for performing steps indicated by each of the

selected nodes and in accordance with the directional connection indicators ([0022],

[0097]); downloading low-level instructions from the scripts for execution in the device;

and instructing systems in the device to perform the downloaded instructions ([0077],

[0097]). Dove does not explicitly teach of identifying parameters associated with each

selected node and receiving respective parameter values from a user. In the same field

of Dove's invention, Petruk teaches a method for creating a graphical program ([0015]

[0127]) wherein a node is configured by identifying parameters associated with each

selected node and receiving respective parameter values from a user ([0131], [0139],

[0151], [0163], [0187])). It would have been obvious to one of ordinary skill in the art at

the time the invention was made to include Petruk's teaching into Dove's test interface

with the motivation being to enable the user to vary the values or parameters for testing

steps thus enhance the flexibility of Dove's test interface. Dove in view of Petruk

teaches wherein the scripts are generated in accordance with the selected parameter

value (Dove, [0022]) (Petruk, [0151]) and further teaches that the device can be used in

testing and measuring (Dove, [0006]) (Petruk, [0064]) but does not specifically teach

that the device is a rheometer. Franck teaches integration of the rheometer into

formulation laboratories (pages 29-30). It would have been obvious to one of ordinary

skill in the art at the time the invention was made to include Franck's rheometer

integration into Dove's test interface with the motivation being to enhance the

usefulness and application of Dove's invention.

Regarding claim 2, Dove teaches wherein the programming interface is a

graphical user interface enabling a user to select pre-existing icons or create icons

representative of nodes (0018]).

Regarding claim 4, Dove, as modified, teaches a step of generating forms for

prompting a user to enter, confirm, or modify parameter values (Dove [0020]) wherein each parameter corresponds to a field in a given form (Petruk, [0151] [0187]).

Regarding claims 5, 20, Dove teaches wherein scripts are created in accordance with information retrieved from a node class library, which tracks parameters associated with nodes and connections between nodes ([0020], [0097].

Regarding claim 6, Dove teaches wherein certain nodes are dynamically created, further comprising a step of determining parameters to be identified for each dynamically created node ([0011], [0012], [0020]).

Regarding claims 7, 21, Dove teaches wherein a sequence engine in the rheometer receives the scripts for executing the instructions independently of the programming interface ([0097]).

Regarding claims 8, 22, Dove teaches wherein the scripts are downloaded to the rheometer via a TCP/IP connection for operation without further intervention from the programming interface [0097]).

Regarding claims 9, 16, Dove teaches wherein certain selected nodes are representative of a plurality of other nodes connected by directional connection indicators for grouping instructions associated with a test to be performed in the rheometer ([0012], [0018]).

Regarding claims 10, 17, 19, Dove teaches wherein the programming interface includes a chart for enabling a user to graphically select and drag icons from a palette ([0020], [0057]).

Regarding claim 11, Dove does not teach wherein the programming interface includes a tree view for hierarchical navigation through selected nodes. An Office Notice is taken that a tree view for hierarchical navigation through selected nodes is known in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a tree view for hierarchical navigation through selected nodes in Dove with the motivation being to provide the user with a clear and better view of the programming interface.

Regarding claim 12, Dove teaches the programming interface includes a chart for enabling a user to graphically select and drag icons from a palette ([0020], [0057[) but Dove does not teach wherein the programming interface includes a tree view for hierarchical navigation through selected nodes. An Office Notice is taken that a tree view for hierarchical navigation through selected nodes is known in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a tree view for hierarchical navigation through selected nodes in Dove with the motivation being to provide the user with a clear and better view of the programming interface.

Regarding claim 14, Dove teaches wherein scripts are created for generating a sequence of instructions to the rheometer indicated by each of the selected nodes and in accordance with the directional connection indicators and data flow indicators (0018]).

Regarding claim 15, Dove teaches wherein low-level instructions are downloaded from the scripts for instructing drivers in the rheometer for performing the downloaded instructions ([0022], [0077]).

Regarding claim 24, Dove teaches wherein the output interface additionally downloads instructions to an analysis and presentation tool for creating reports for display to a user ([0073], [0076], [0077]).

Regarding claim 25, Dove teaches wherein the programming interface operates on a graphical user interface for enabling selection of nodes and connections of nodes without requiring a user to enter programming code ([0011]).

Regarding claim 27, Dove teaches comprising the step of encapsulating a sequence of steps for performing a test in a rheometer to be represented as a single icon ([0077]).

5.   Applicant's arguments filed on 04/28/08 have been considered but they are not persuasive.

The Declaration under 37 CFR 1.132 filed 04/28/08 is insufficient to overcome the rejection of claims 1-2 and 4-29 based upon Franck as set forth in the last Office action because the Declaration is not signed by all named inventors. Furthermore, merely stating that "The named joint inventors conceived of and invented the systems and products described in the Franck article while working for Rheometric" is insufficient to show that the Franck publication is the inventors' own work (see MPEP 715.01(c), 715.04, and 716).

Applicant argues "Dove and Petruk fail to disclose, teach, or suggest the claimed

invention. Neither Dove nor Petruk mention the applicability of the systems for controlling the operation of a rheometer and for configuring a rheometer as claimed". It is noted that this argument attacks the Dove and Petruk references individually since the rejection is based on the combination of Dove, Petruk, and Franck wherein Franck is cited for the rheometer limitation. Applicant is respectfully reminded that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant further argues that "it would not be obvious to use the combination of Dove and Petruk to control the operation of a rheometer". The Examiner respectfully disagrees. Dove in view of Petruk teaches the scripts are generated in accordance with the selected parameter value (Dove, [0022]) (Petruk, [0151]) and further teaches that the device can be used in testing and measuring (Dove, [0006]) (Petruk, [0064]) but does not specifically teach that the device is a rheometer. Since rheometer is a measurement device, it would not be obvious to use the combination of Dove and Petruk to control the operation of a rheometer.

6.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

7.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Kieu D. Vu. The examiner can normally be reached on

Mon - Thu from 7:00AM to 3:00PM at 571-272-4057.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, William Bashore, can be reached at 571-272-4088.

        The fax phone numbers for the organization where this application or proceeding

is assigned are as follows:

        571-273-8300

        and / or:

        571-273-4057 (use this FAX #, only after approval by Examiner, for "INFORMAL"

or "DRAFT" communication. Examiners may request that a formal paper / amendment

be faxed directly to them on occasions).

        Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

/Kieu D Vu/
Primary Examiner, Art Unit 2175